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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4282

13 **DONOVAN KYLE GONZALES**
14 **8481 Holder Street**
Buena Park, CA 90620

A C C U S A T I O N

15 **Pharmacy Technician Registration No. 109943**

Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about January 20, 2011, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number 109943 to Donovan Kyle Gonzales (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on October 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Section 4300, subdivision (a), of the Code provides that every license issued may be suspended or revoked.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’

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1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 (4) Whether the licensee has complied with all terms of parole,
4 probation, restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

6 11. California Code of Regulations, title 16, section 1770, states:

7 For the purpose of denial, suspension, or revocation of a personal or
8 facility license pursuant to Division 1.5 (commencing with Section 475) of the
9 Business and Professions Code, a crime or act shall be considered substantially
10 related to the qualifications, functions or duties of a licensee or registrant if to a
11 substantial degree it evidences present or potential unfitness of a licensee or
12 registrant to perform the functions authorized by his license or registration in a
13 manner consistent with the public health, safety, or welfare.

11 **COST RECOVERY**

12 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations
14 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(September 30, 2011 Criminal Convictions for Petty Theft and**
18 **Falsely Reporting A Crime on July 7, 2011)**

19 13. Respondent has subjected his license to discipline under Code sections 490 and
20 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the
21 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as
22 follows:

23 a. On or about September 30, 2011, in a criminal proceeding entitled *The*
24 *People of the State of California vs. Donovan Kyle Gonzales*, in Orange County Superior Court,
25 Case Number 11NM15946, Respondent was convicted on his plea of guilty to violating Penal
26 Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5 subdivision (a),
27 falsely reporting a crime, both misdemeanors. Charges for violation of PC sections 487,

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1 subdivision (a), grand theft of property with a value over \$950.00, and 508, embezzlement, were
2 dismissed pursuant to a plea bargain.

3 b. As a result of the convictions, on or about September 30, 2011,
4 Respondent was sentenced to three years informal probation and ordered to serve 20 days in the
5 Orange County Jail or perform 20 days of service with the California Department of
6 Transportation, in lieu of jail. Respondent was also ordered to pay \$200.00 in fines, \$140.00 in
7 fees, and restitution.

8 c. The facts that led to the conviction are that on or about the weekend before
9 July 7, 2011, Respondent and a co-conspirator planned a robbery during Respondent's nightly
10 money drop off in his job for Papa John's Pizza at a bank in Buena Park, California. On or about
11 July 7, 2011, with a bank bag containing approximately \$697.00, Respondent drove to the bank,
12 approached and unlocked the night deposit box, looked around, and returned to his parked
13 vehicle. When the co-conspirator arrived, Respondent got out of the car with the bank bag and
14 approached the night deposit box. The co-conspirator ran up to Respondent, pushed him away
15 from the night drop, grabbed the bank bag, and ran away. Respondent then called 911 to report a
16 robbery and to request assistance. Respondent admitted to setting up the ruse after an
17 investigator told him that the entire sequence of the alleged robbery was recorded through the
18 bank's surveillance cameras.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,**
21 **Fraud, Deceit, or Corruption)**

22 14. Respondent has subjected his license to discipline under Code section 4301,
23 subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of the
24 day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to the
25 police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and corruption,
26 as detailed in paragraph 13, above.

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1 **PRAYER**

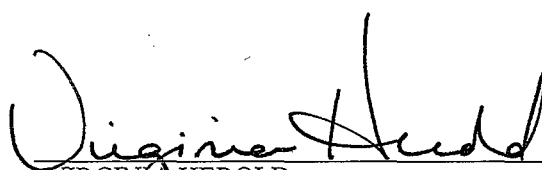
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Technician Registration Number 109943,
5 issued to Donovan Kyle Gonzales;

6 2. Ordering Donovan Kyle Gonzales to pay the Board of Pharmacy the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: 6/1/12


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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